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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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FEB 27 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of the  
Federal-State Joint Board  
on Universal Service

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CC Docket No. 96-45/  
FCC 01-8

COMMENTS OF THE WYOMING PUBLIC SERVICE COMMISSION IN RESPONSE  
TO THE FEDERAL COMMUNICATIONS COMMISSION'S FURTHER NOTICE OF  
PROPOSED RULEMAKING

(February 26, 2001)

The Wyoming Public Service Commission (WPSC) hereby submits its comments in response to the Federal Communications Commission's (Commission's) Further Notice of Proposed Rulemaking (FNPR), released on January 12, 2001. The purpose of the FNPR is to obtain comments and replies on the Recommended Decision of the Federal-State Joint Board on Universal Service with respect to a plan for reforming the rural universal service support mechanism submitted by the Rural Task Force. The WPSC is the agency of the State of Wyoming that has jurisdiction to regulate, *inter alia*, intrastate telecommunications companies serving in Wyoming. As such, the WPSC is an interested party in this proceeding. Additionally, the WPSC has been a full and active participant in federal universal service issues over the past several years. We have had an observer or participant at every Rural Task Force (RTF) meeting. We have previously filed comments and reply comments with the Joint Board strongly supporting the RTF Recommendation. We continue this support.

We applaud both the Commission and the Joint Board for their expeditious review of the RTF Recommendation and in seeking comments on the issue of universal service for rural carriers. Review and reform of the universal service support for rural carriers is long overdue, and action to adopt the RTF Recommendation should move forward as quickly as the public process allows. We also applaud the Joint Board for recognizing that the RTF Recommendation is a delicately crafted package containing important and valuable compromises, and that it should be put forward and adopted as a package. We urge adoption of the RTF Recommendation without further delay. Furthermore, we understand the Commission's interest in addressing universal service issues and access reform issues in tandem, but urge the Commission not allow any unresolved access reform issues to stand in the way of timely and necessary federal universal service reform.

Many voices have entered the debate on universal service with the goal of trying to accomplish one clear objective or another. However, the federal Telecommunications Act of 1996 is clear in setting a policy course to follow for universal service reform. This course is spelled out in the Universal Service Principles found at Section 254(b) of the Act. Clearly, the RTF Recommendation passes the test of

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accomplishing each of the stated principles, and therefore, should be adopted without further delay.

The first and foremost universal service principle in the 1996 Act, at Section 254(b)(1), mandates that "*Quality services should be available at just, reasonable, and affordable rates.*" This principle guides the Rural Task Force Recommendation; and it is critical to Wyoming and to all rural Americans. We have seen prices for rural services rise as we prepare for competition; and together we must implement policies and practices that will keep telephone service ubiquitous in both rural and urban areas.

In 1995, Wyoming enacted pro-competitive legislation that included the elimination of subsidies from prices and movement to pricing at or above total service long-run incremental cost (TSLRIC). Today, more than ninety percent of the lines in Wyoming are priced at or above their TSLRIC cost, including a significant portion of the lines provided by Wyoming rural carriers. The consequences of the adoption and implementation of the competitive model are local service rates that are high, in some cases, \$92 per line per month. This rate is *net* of federal high cost support, and the difference between the rate and an affordable price for customers must be borne by the Wyoming universal service fund (WUSF). A sample of the cost-based prices that have been approved for Wyoming's rural carriers is as follows:

TCT West	\$27.31 - \$45.08
Tri-County Telephone	\$44.86 - \$45.08
Union Telephone	\$40.95 - \$90.35
Columbine Telephone	\$29.65 - \$40.46
United Telephone	\$28.00 - \$91.88

The above prices are prior to taxes, surcharges, subscriber line charges, and other billed charges, so the total customer bill will be \$7 to \$10 higher per month simply for dial tone. Without appropriate levels of federal universal service support, the WUSF standing alone would be strained in an attempt to keep local Wyoming rates *just, reasonable, and affordable*.

The Rural Task Force kept in mind the specific and laudable goal of affordable rates, and it is an overriding theme throughout its recommendation. As it stated at the conclusion of its first White Paper, wherein the RTF defined its mission and purpose:

"Overall, we must keep in mind that while the focus of our work is necessarily on the economics of telephone companies, the ultimate beneficiaries are telephone customers who expect service to remain modern, affordable, and accessible."<sup>1</sup> White Paper #1, *Rural Task Force Mission and Purpose*, September, 1999, page 31.

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1

One of the specific recommendations that the RTF made was to reject the use of the Commission's forward-looking cost model for support for rural carriers. Instead, a modified embedded cost system is recommended. This recommendation was not made without careful study and reasoning. Rather, the Recommendation is tied directly to the need for *reasonable and affordable rates*. The forward-looking cost model was rejected for use in this case for the following reason:

"The aggregate results of this study suggest that, when viewed on an individual rural wire center or individual Rural Carrier basis, the costs generated by the Synthesis Model are likely to vary widely from reasonable estimates of forward-looking costs. In fact, much of the data analysis suggests that the model tends to be in the high and low extremes, rather than near the expected results for the area being analyzed."<sup>2</sup> *White Paper #4, A Review of the FCC's Non-rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies*, September, 2000, page 10.

<sup>2</sup> *White Paper #4, A Review of the FCC's Non-rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies*, September, 2000, page 10.

2

The RTF's recommendation to use a Modified Embedded Cost System is a good foundation for a federal support mechanism whose primary purpose is to maintain universal service in all areas of our country -- rural and urban, rich and poor, flat or mountainous. Clearly, if a support system were adopted that even *inadvertently* reduced the current level of federal support, many carriers would be unable to maintain affordable rates. This could have a significant impact on the competitive environment, since carriers may be faced with the choice of pricing themselves out of the market or having to maintain implicit subsidies in rates to remain affordable. Thus, we must maintain or increase the current levels of federal support for the principle of *affordable rates* to ring true.

The second universal service principle, found at Section 254(b)(2) of the 1996 Act, is that "*Access to advanced telecommunications and information services should be provided in all regions of the Nation.*" This too is embodied in the RTF Recommendation and should be adopted as an integral part of the comprehensive package. The Recommendation acknowledges the existing state of the network and does not make unreasonable or unrealistic proposals. For example, it does not mandate immediate high speed data access to every home or business in order for a company to continue to qualify for support. Rather, it takes the rational approach of a "no barriers policy" as new plant is added and as technology becomes widely available and affordable. In response to one of the specific questions in the FNPR, yes, the proposal encourages growth in investment and focuses many of its support recommendations on investment levels. However, companies would have new investment supported but would still have to justify their respective investment decisions with anticipated sales and revenue data. The costs are shared between the support programs and on-going revenues.

Support should be provided at a level that allows rural customers to have the same **access** to advanced services as that offered to non-rural customers, if the rural customers are willing to pay the price of the advanced service offering. Rural carriers continue to replace outside plant to accommodate the data and information needs of their customers but will not continue to make the investment to unload loops, provide more transport plant, unload loops from analog carrier systems, and make the other investments necessary for enhanced services, unless some recognition of the high cost of these investments is given in a federal support mechanism. The "no barriers" recommendation is reasonable and should be supported.

The third universal service principle, found at Section 254(b)(3) of the 1996 Act, is that "*Consumers in all regions of the Nation . . . should have access to telecommunications and information services. . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.*" Comparable rates and services are key elements of a workable universal service plan. While the Rural Task Force rejected a funding model that would significantly reduce the

size of the fund, it also did not recommend a model that would drastically increase the size of the fund or allow it to be uncontrollable, in spite of some contrary claims of excessiveness. The Recommendation begins with the current method of support which already requires rural carriers to have costs **higher** than the national average before any support is given. Even then, support is graduated logically so that the most support goes to the companies with the highest costs.

The proposed support is neither excessive nor uncontrolled. While the Recommendation proposes to lift the current cap on the fund, thus re-basing the fund in the first year, it then proposes a new and different cap. The fund size, while larger than today's fund, would still be subject to parameters regarding its size. It is proposed to grow by line counts and support for unusually large investment. This is just the kind of fund that is needed, one that incents wise investments with support only in areas with higher than average costs.

In response to the claims of excessiveness, an examination of the results of the Recommendation clearly refutes this claim. In Wyoming, the embedded cost per loop served by a rural carrier averages about \$60 per month, although the range for individual companies runs from a low of about \$31 to a high of about \$86 per loop per month. This average loop cost of \$60 is more than twice the national average for rural carriers and is more than three times the average non-rural loop cost. Under the RTF's Recommendation, our average high cost loop support is about \$23 per month, or an increase of about \$1 per line per month over the current capped support levels. Without any additional support from the federal level, such as continued long-term support or high cost local switching support, this leaves an average monthly loop cost to be recovered at the state level of \$37 per month. According to the FCC's own published statistics, the representative urban residential rate, before taxes and surcharges, is just under \$14 per month. If this were to be considered the "comparable" rate under the 1996 Act, that would leave \$23 per month to be recovered from the state universal service fund, plus the cost of switching and transport. With about 50,000 lines served by rural carriers in Wyoming, this would result in a required fund of nearly \$14,000,000 annually to support the total recovery of loop cost for rural carriers. Based on total Wyoming intrastate revenues of about \$250 million annually, this would translate into a WUSF surcharge to customers of 5.5%. This is unacceptable, given that this is only **part** of the universal service support that must be provided from the WUSF.

If however, one were to assume that the more comparable rate is the average forward-looking cost of providing service in the non-rural areas, or about \$24 per loop per month, then the Wyoming funding needs are reduced by about \$6 million annually, still leaving \$8 million to be funded by the WUSF just for rural carrier loop support. This amount is in addition to the more than \$8 million that already is funded by the WUSF to assist in keeping the rates for non-rural carrier customers affordable. Each additional \$1 million of support received by rural companies (and thus, their customers) in Wyoming averages out to be additional support of \$1.66 per line per month. Funding this ourselves through the WUSF results in an additional charge of about \$.20 per every

\$50 telephone bill. Based on total interstate revenues, this same \$1 million would only require 4/100 of one cent on each \$50 telephone bill. It also results in a total bill, just for dial tone, of about \$35. This raises questions of affordability, as does any scenario that sets the comparable rate at any level higher than \$24.

Wyoming has just released its second affordability study.<sup>3</sup> The entire affordability study can be found on the WPSC's website at <http://psc.state.wy.us>

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3 In this survey of 1,000 customers, with a 42% response rate, the majority of respondents indicate that they pay more than \$35 per month for local telephone service. Of these customers with the highest prices, 60% of them ranked the value of their service below average. Additionally, the survey findings show that 53% of the respondents are unwilling to pay more than they currently pay for landline telephone service. Yet, when asked to rank local telephone service relative to other types of information services, 71% of the respondents found local telephone service to be the most important.<sup>4</sup> The survey shows that 71% ranked local service most important, 12% found long distance to be most important; 10% ranked cable TV first, 4% ranked the newspaper first, and finally, 3% ranked the Internet most important. Additionally, 81% of the respondents indicated that they are not willing to pay more for higher quality Internet access.

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4 The current level of federal support must be maintained or increased to achieve the goal of *comparable rates and services*.

The fourth universal service principle, stated at Section 254(b)(4) of the 1996 Act, requires that "*All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.*" The Recommendation does not change the current method of assessing telecommunications carriers (who then often, in turn, assess customers) in order to obtain the funds necessary to provide the recommended support to rural carriers. Pursuant to recent federal court decisions, that assessment is currently applied only against revenues subject to the Commission's jurisdiction; and it is not assessed against intrastate revenues. While some advocate application of the assessment against the broadest possible revenue base, we do not believe that it is necessary to address the issue in this proceeding. The court has already ruled on this issue, and there are more important issues to be addressed at this time than revisiting already-decided funding matters. It is also important to recognize that federal and state universal service funds work in concert. Many states support their funds through intrastate-only assessments, thus providing a symmetrical complement to the federal assessment on interstate revenues only. In light of the cost-based rates that are already reaching unprecedented proportions, adding to the state burden would be a travesty. Those who advocate that states need to share in the burden of assisting high-cost customers need only to look to Wyoming to see how we have stepped up and taken our share of the burden.

The fifth universal service principle, stated at Section 254(b)(5) of the 1996 Act, is that "*There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.*" This principle is of central importance to rural states such as Wyoming. The RTF's Recommendation is again based on reasoned study in this area of sufficiency and predictability. In support of its decision to use a modified embedded cost mechanism, it had to reject the use of the forward-looking cost model which is still advocated by many. In support of sufficiency, it reasoned:

"The financial impact of any error in support calculation is also minimal for the RBOC's. These companies today receive approximately \$400 million in explicit universal service support, but have overall loop revenue requirements of approximately 40 billion dollars. Thus, high-cost funding for non-rural Carriers represents approximately one percent of loop revenue requirements. In contrast, within the group of 1,300 Rural Carriers federal universal service support payments for high cost loop support range from zero percent to has high as 74 percent of loop revenue requirements. Thus, the result of errors or radical changes in amount of explicit support developed from a model which is imprecise at the company level could cause an individual Rural Carrier to either gain a substantial windfall or have a serious deficiency in "sufficient" support." [Footnotes omitted.]<sup>5</sup> *White Paper #4, A Review of he FCC's Non-Rural Universal*

<sup>5</sup> *White Paper #4, A Review of he FCC's Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies*, September, 2000, page 10.



*Service Fund Method and the Synthesis Model for Rural Telephone Companies,*  
September, 2000, page 10.

5

Thus, the RTF took seriously its challenge to "right-size" the fund, not just to grow it or shrink it to some predetermined level. The RTF produced a significant record showing why it is appropriate to size the fund correctly, given the differences in cost drivers for rural and urban areas.<sup>6</sup> See White Paper #2, *The Rural Difference*, issued January, 2000. For example, page 21 contains a chart that shows that even in Wyoming, the second lowest population dense state in the Nation, the population density per square mile for rural carriers is one-fourth of that for Wyoming non-rural carriers (1.25 versus 5 per square mile).

<sup>6</sup> See White Paper #2, *The Rural Difference*, issued January, 2000. For example, page 21 contains a chart that shows that even in Wyoming, the second lowest population dense state in the Nation, the population density per square mile for rural carriers is one-fourth of that for Wyoming non-rural carriers (1.25 versus 5 per square mile).

6 The proposal focuses on sufficiency, through its resizing with caps, its limiting safety valves, and its recognition of the need to restore service when catastrophes strike. The Recommendation provides **specific** support for normal expenditures and investment in rural areas as well as a way to support additional investment and provide disaster relief. While one may not be able to predict support levels down to the dollar for any particular future period, the formulas provided in the Recommendation provide a level of **predictability** which allows one to know the basis for support and generally the range of that support.

The RTF Recommendation also recognizes that, for funding predictability to have any real meaning or positive impact on rural areas, it is imperative that rural carriers have the incentive to invest in facilities over a period of certainty, with the recommendation of not less than five years of funding stability. We support a designated level of stability based on our own experiences in Wyoming with pricing and competition. We have found that carriers are more willing to invest in significant upgrades to their networks if there is some certainty of support being provided over time. The uncertainty of support mechanisms over the past few years has been a frequently stated reason of many carriers for resisting the movement of prices toward costs and for hesitation in making major network investments. This has impacted not only the customers and services they may be offered, but has also impacted the competitive environment, as carriers resist removing implicit subsidies from rates. While we realize that there will continue to be a great deal of uncertainty in the telecommunications industry, this is an opportunity to stabilize the support portion of the decision making process. We urge adoption of a defined period of time for maintaining the proposed support mechanism. However, we are not opposed to discussion of further potential modifications to the system; and we encourage such discussions during this period of stability.

Several interested parties have advocated delay in implementation of the RTF's Recommendation for further study of an expanded list of support options. We cannot and do not encourage delay in implementing the proposal before you. The Recommendation has been studied for 27 months by all factions of the industry and public interest groups, and is well supported with a series of RTF white papers and written presentations. The time is overdue for implementation of a system that will be in place for a designated time, making it *predictable*. However, we think it would be wise, after implementation of the proposed method, and after re-basing the fund and putting the necessary support in place, to **then** examine it for further modification. Flaws or omissions identified in the implementation process should then be discussed and recommendations developed. Furthermore, any industry changes that impact the system could be identified for further modification. We also continue to recommend some study of merging the rural and non-rural carrier support mechanisms, because the cost of serving an area is driven by factors such as density, remoteness, and terrain, rather than by the corporate size of the carrier itself. However, additional delay at this time would be untenable. We have waited far too long for the proposal that is before you and additional delay is neither required or desirable.

The sixth universal service principle, stated at Section 254(b)(6) of the 1996 Act, relates to access to advanced services for schools, health care providers, and libraries. This specific area of support was not within the scope of the work done by the RTF. We simply note that the school, library and health care support mechanisms were adopted more than three years ago by the Commission. Yet, perhaps there is a tie between the work in this proceeding and the mechanisms that are currently in place for schools, libraries, and health care providers.

Throughout the process before the RTF and the Joint Board, there have been cries of foul as rural customers ask for the support that is required under federal law. These cries come from the states who are deemed to be "payor" states, that is, states that are more populated. Yet, the Commission's own industry statistics and the Federal-State Joint Board monitoring reports show that several of these states are receiving significant sums of money for schools, libraries, and rural health care, as well as from the low income support portions of the universal service fund. For instance, if, rather than taking a narrow and isolated view of only the high cost support portion of the total universal service fund, we were to look at the low income portion of the fund, we would find that California and New York both receive substantially more from the fund than they contribute. Wyoming on the other hand, is a "payor" to the low income fund. Similarly, New York and California and Illinois are all recipients of support from the schools, libraries, and rural health care portion of the fund, each on a larger per line basis than Wyoming receives from this portion of the fund.<sup>7</sup> Additional information on payments and contributions is contained in the Comments of the Rural Task Force, filed on February 21, 2001.

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7 The fund must be considered in its totality. Simply because some pieces of the overall support mechanism were put in place first does not give recipients some inalienable right to funding at the expense of high cost customers. The fund must be "right-sized" to cover all needs, including those of high-cost customers as well as schools, libraries, rural health-care providers, and low-income customers.

The seventh principle of universal service was adopted by the Commission in its May 1997 order, and it involves *competitive neutrality*. This principle is addressed extensively and sincerely by the Rural Task Force in its recommendations on portability, deaveraging, targeting, and transparency.<sup>8</sup> The RTF issued White Paper #5, *Competition and Universal Service*, in September, 2000, which contains a discussion and list of competitive principles that are incorporated into the Recommendation. Additionally, White Paper #6, *Disaggregation and Targeting of Universal Service Support*, issued September, 2000, lays the foundation for the competitive disaggregation and portability principles that significant portions of the Recommendation.

<sup>8</sup> The RTF issued White Paper #5, *Competition and Universal Service*, in September, 2000, which contains a discussion and list of competitive principles that are incorporated into the Recommendation. Additionally, White Paper #6, *Disaggregation and Targeting of Universal Service Support*, issued September, 2000, lays the foundation for the competitive disaggregation and portability principles that significant portions of the Recommendation.

8 The recommendations are competitively neutral, as they should be. Support will be on a per line basis and will be transferable from the incumbent to competitive carriers. The Recommendation delineates options that encourage the deaveraging and targeting of support to those areas and customers with truly high costs. We support the competitive framework that is supported by these recommendations.

In summary, the WPSC wholeheartedly supports the adoption of the RTF Recommendation which is now before you. We have been a contributing part of the process and have watched the analysis, debate and study of this important issue. We have watched parties who began from opposite ends of the spectrum reach consensus on an issue. We have watched the Joint Board study the Recommendation carefully and forward it to you without change. We have surveyed our customers on what they can and cannot tolerate in terms of additional prices. We have waited while non-rural support was studied, revised, and put in place. We have waited while schools and libraries got their share. Equitable consideration of the needs of rural high cost customers is long overdue. We urge you to adopt the RTF Recommendation without further delay.

Sincerely,

STEVE ELLENBECKER  
Chairman

STEVE FURTNEY  
Deputy Chair

KRISTIN H. LEE  
Commissioner

Certificate of Service

I, Stephen G. Oxley, Chief Counsel of the Wyoming Public Service Commission, hereby certify that, on February 26, 2001, the within and foregoing Comments of the Wyoming Public Service Commission in Response to the Federal Communications Commission's Further Notice of Proposed Rulemaking, was served on the service list required by the Federal Communications Commission with respect to the FNPR in CC Docket No. 96-45 as follows.

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